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IN THE

Supreme Court of the United States

OCTOBER TERM, 1934.

No. 10.

GUY T. HELVERING, Commissioner of Internal Revenue,
Petitioner,
v.
STOCKHOLMS ENSKILDA BANK.

ON A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

BRIEF FOR THE RESPONDENT.

Opinions Below.

The opinion of the Board of Tax Appeals (R. 8) is reported in 25 B. T. A. 1328. The opinion of the Court of Appeals of the District of Columbia (R. 19) is reported in 68 F. (2d) 407.

Jurisdiction.

The judgment below was entered December 4, 1933 (R. 22). On February 27, 1934, the Chief Justice entered an order granting an extension of time for the filing of a petition for a writ of certiorari for sixty days from March 4, 1934 (R. 23). The petition for a writ of certiorari was filed March 24, 1934, and was

granted April 30, 1934. The jurisdiction of this Court rests on Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925.

Question Presented.

Whether interest paid during 1927 by the United States to a foreign corporation upon a refund of income taxes, falls within the provisions of Section 217 (a)(1) of the Revenue Act of 1926 that "interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise," is to be "treated as" income from sources within the United States, or the provisions of Section 217(c)(1) of that Act that other interest paid to a foreign corporation is to be "treated as" income from sources without the United States; and, if such interest falls within the provisions of Section 217(a)(1), then:

(a) Whether such interest is exempted from tax by Section 213(b)(4) of the Revenue Act of 1926; and if not,

(b) Whether such interest is allowable as a credit against income by virtue of Section 236(a) of the Revenue Act of 1926.

Statutes Involved.

The statute here involved is the Revenue Act of 1926 (c. 27, 44 Stat. 9) and the pertinent provisions thereof are hereinafter set out in the Appendix, *infra*, pp. 38-46. The more important of these may be paraphrased, in brief, as follows:

Section 230 of the Act imposes an income tax on the net income of corporations.

Section 232 defines net income to mean gross income, as defined in Section 233, less the deductions allowed.

Section 233 provides that "in the case of a foreign corporation, gross income means only gross income from sources within the United States determined * * * in the manner provided in Section 217."

Section 217(a)(1) provides that "interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise," shall be "treated as" from sources within the United States, and Section 217(c)(1) provides that "Interest other than that derived from sources within the United States as provided in paragraph (1) of subdivision (a)" shall be "treated as" from sources without the United States.

Section 213(b)(4) provides that interest upon obligations of the United States (with certain exceptions not here important) shall be excluded from gross income and exempt from the tax.

Section 236(a) provides that such interest upon obligations of the United States as is included in gross income, shall be allowed as a credit; that is to say, shall not be included in net taxable income.

Statement.

The facts are undisputed. As stated in the opinion of the Board of Tax Appeals, they are as follows (R. 8):

The respondent is a foreign corporation, organized and existing under the laws of the Kingdom of Sweden, with its principal office in that country. It had no office

or place of business in the United States. During the year 1927 the respondent received from the United States Government the sum of $8,683.91 as interest on a refund of Federal income taxes which had been overpaid for a prior year. The Commissioner of Internal Revenue increased the respondent's income for the year 1927 by including therein the interest on the refund, and on account of such increase determined a deficiency in the sum of $1,173.32. (See R. 4-5.) The respondent thereupon appealed to the Board of Tax Appeals (R. 2-3). That Board held that such interest is not within the definition of income to be "treated as" from sources within the United States and consequently not to be included in the gross income of a foreign corporation (R. 8-11). The Commissioner appealed to the Court of Appeals of the District of Columbia (R. 12-13), where the decision of the Board of Tax Appeals was affirmed.

Summary of Argument.

The brief for the petitioner sets up, and appears to rest its case upon, an asserted purpose on the part of Congress to tax to a foreign corporation every item of income derived in fact from sources within the United States. From this, the brief argues, Section 217(a)(1) should be so construed as to bring the interest here in question within the terms of the section, if that result can be accomplished without doing violence to the words employed.

In our view, on the contrary, the legislative history of the section unmistakably exhibits, and its words unambiguously express, exactly the opposite purpose. After years of experience of the uncertainties inherent in using the fact of the source of income as the criterion of its taxability or non-taxability, Congress abandoned

the source of the income as the test, and established in lieu thereof a system of definitions embracing every possible classification of income, and stating with precision and exactitude which classes of income were to be wholly taxed [Sec. 217(a)], which were to be wholly untaxed [Sec. 217(c)], and which were to be taxed in part and untaxed in part [Sec. 217(e)]. While, on the one hand, it was, of course, necessary, from jurisdictional considerations, to limit the classes of income to be taxed to those emanating in one manner or another from domestic sources, on the other hand, certain classes of income which clearly were from sources within the United States, as well as certain other classes of income which might have been contended to be from American sources, were expressly excluded from taxable classification. Indeed, in the case of interest, Section 217(c)(1) in terms provides for non-taxability, except such classes thereof as may fall within the definition contained in Section 217(a)(1).

With respect to the taxation of interest to foreign corporations, the purpose of Congress is clear that interest received by such taxpayers was to be taxed, or not taxed, depending only upon whether the same fell within the definition of Section 217(a)(1). The legislative purpose relied upon in the brief for the petitioner is, as we contend, non-existent; and there is no reason to construe the words of Section 217(a)(1) to embrace more than is connoted by their natural and accepted import.

Section 217(c)(1) provides that interest is not taxable to a foreign corporation unless it falls within the definition of Section 217(a)(1), which is: "Interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise." Unless the interest here in

question can be brought within that definition, it must fall within Section 217(c)(1) and hence is expressly not taxable. As we contend, the interest received by the respondent upon the refund of its overpaid Federal taxes was not upon an "interest-bearing obligation" within the purview of Section 217(a)(1); and even if it were, the obligation was not that of a "resident". Giving to the words of Section 217(a)(1) their natural and obvious import, "interest-bearing obligation" is limited to a contractual engagement and does not include a statutory duty to compensate for a wrong; "resident", moreover, cannot be said to include the sovereign, which has no capacity to reside.

If this be doubtful, the applicable canons of construction lead to the same result. Section 217(a)(1) imposes a tax and should be strictly construed, as to both "obligations" and "residents", in favor of the taxpayer. Moreover, Section 217(c)(1) lays down a general rule of non-taxability, to which Section 217(a)(1) is an exception; and Section 217(a)(1) should, therefore, be construed strictly and all doubts resolved in favor of the general rule of non-taxability. Further, "obligations" occurs in a context calling for the application of the rule of *ejusdem generis* and should be limited in its meaning to duties contractual in nature, as are the preceding specific words. Finally, the word "obligations" has been judicially construed to exclude non-contractual duties in another section of the same statute where the context is precisely analogous.

If the last mentioned decisions are wrong, then this interest, if taxable under Section 217, is exempted by Section 213; and, in any event, if the interest is taxable under Section 217, it is allowable as a credit, and hence relieved from tax, by Section 236.

ARGUMENT.

I.

With the enactment of the Revenue Act of 1921, the Congress abandoned its unsatisfactory former policy of taxing nonresident aliens and foreign corporations upon all items of income derived in fact from sources within the United States; and substituted in lieu thereof the more certain and workable scheme, contained in the 1921 and all subsequent Revenue Acts, which "explicitly allocates certain important sources of income to the United States or to foreign countries, as the case may be." [1]

Under Revenue Acts preceding that of 1921, Congress had taxed nonresident aliens and foreign corporations on such of their income as was derived in fact from sources within the United States. The source of the income, as the test of taxability, however, was soon established to be unsatisfactory, for numerous perplexing questions as to the actual sources of many classifications of income began to appear. Difficulties arose as to the sources of the income of trans-oceanic steamship companies; of the income from the purchase of goods within and their sale without the United States, and the converse of that question; of the income from the manufacture, or partial manufacture of goods within and their sale without the United States, and the converse of that question; and of income of other kinds.

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1. The quotation is from the *Senate Finance Committee Report, Revenue Act of 1921*, Report No. 275, 67th Congress, p. 16.

In an Opinion of the Attorney General (32 Op. A. G. 336) rendered on November 3, 1920, it was held, among other things, that:

> (1) A foreign corporation partially manufacturing articles in this country, shipping them to England, finishing them and selling them there, derived no income from sources within the United States;
>
> (2) Income accruing to a foreign corporation from the purchase of logs in this country and their sale abroad did not constitute income from sources within the United States;
>
> (3) Income derived by a foreign corporation from the purchase of goods abroad and their sale in the United States through the medium of a New York corporation constituted income derived from sources within the United States; and
>
> (4) Income derived by a foreign steamship company from the transportation of freight and passengers from the United States to foreign ports constituted income derived from sources within the United States.

In view of this unsatisfactory state of affairs, Congress in considering the bill which became the Revenue Act of 1921 determined to change its test of taxability. The source of the income, as the criterion, had proven to be unworkable; and in the 1921 Act the more certain and practical test of a system of explicit definitions was established.

The purpose of Congress to make this fundamental change is stated in the *Senate Finance Committee Re-*

port, Revenue Act of 1921 (Report No. 275, 67th Congress, 1st Sess., p. 16):

> "Section 217 states explicit rules—applicable principally to non-resident aliens and foreign traders—for computing the net income derived from sources within the United States. The present law is both obscure and economically unsound, inasmuch as the Attorney General has held that where goods are manufactured or produced in the United States and sold abroad, no part of the profit is derived from a source within the United States. This section explicitly allocates certain important sources of income to the United States or to foreign countries, as the case may be, * * *."

And the purpose is also set out in the *House of Representatives Ways and Means Committee Report, Revenue Act of 1921* (Report No. 350, 67th Congress, 1st Sess., p. 12):

> "Section 223: The necessity for changing the law relating to the taxation of foreign traders has been explained in the discussion of Section 201. It is further necessary to clarify and change the present law relating to 'income derived from sources within the United States', inasmuch as the Attorney General has held that where goods are manufactured or produced in the United States and sold abroad no part of the profit is derived from a source within the United States. Section 223 of the proposed bill explicitly allocates certain important sources of income within or without the United States, as the case may be * * *."

So to clarify and change the law, Congress enacted the Revenue Act of 1921 with numerous new provisions and based (in this regard) upon a fundamentally different theory. For one subsection of seven lines,[2] contained in the Revenue Act of 1918, the provisions taxing foreign corporations were changed to and succeeded by a new section of fifteen subdivisions and ninety-three lines.[3] From a general rule that the source of the income was determinative, the test was changed to an all-inclusive system of detailed and specific definitions of taxable and non-taxable income. As regards interest, instead of the general rule that all interest which could be reached by the United States was taxable, the 1921 Act provided that no interest was taxable, except such as came within the defined exception to that rule. It is the provisions of the 1921 Act which have been carried over substantially unchanged into the Revenue Act of 1926.

The Revenue Act of 1918 provided that foreign corporations were taxable on "income from sources within the United States, * * *."[4]

Section 217 of the Revenue Act of 1921,[5] on the contrary, prescribed that the classes of income defined in subdivision (a) were to be "treated as" from sources within the United States and were wholly taxable; that the classes of income defined in subdivision (c) were to be "treated as" from sources without the United States and were wholly non-taxable; and, in subdivision (e),

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2. Section 233(b) of the Revenue Act of 1918, c. 18, 40 Stat. 1057, 1077.

3. Section 217 of the Revenue Act of 1921, c. 136, 42 Stat. 227, 243. Section 217 of the 1921 Act contains, in addition to the above, two other subsections carrying over provisions relating to deductions found in other parts of the 1918 Act.

4. Section 233(b), *supra*, foot-note 2.

5. *Supra*, foot-note 3.

that all income not covered by either (a) or (c) was to to "allocated or apportioned" and was taxable in part and non-taxable in part. But subdivision (a) does not include, in its definitions of income to be "treated as" from sources within the United States, every item of income in fact from sources within the United States, nor does subdivision (c) confine its definition of income to be "treated as" from sources without the United States to items of income in fact from sources without the United States.

The brief for the petitioner, as we understand, agrees with us that the plain purpose in making the change from the 1918 Act, was to substitute a comprehensive specification in order to avoid the disputes which had arisen under the prior law. Yet it is there contended that the change indicates a legislative purpose to extend and make all-inclusive taxes upon the income of foreign corporations derived from sources within the United States. In our view, no general purpose either to enlarge, or to diminish, the classes of income subject to the tax was indicated; the purpose which was exhibited was to change, in the interests of certainty, the criterion of taxability. While on the one hand the 1921 Act did not, of course, attempt to tax any income which was clearly without the jurisdiction of the United States, and therefore laid no tax on income which could not, under any construction, be said to be from domestic sources, on the other hand it expressly omitted to tax certain items of income clearly from sources in fact within the United States and other items of income which might well have been held to derive in fact from sources within the United States. For example, of the four classes of income as to which the Attorney General had ruled in his Opinion (32 Op. A. G. 336) above referred to, the 1921 Act taxed, in part, one of the classes

which the Attorney General had ruled was derived wholly from sources without the United States; and relieved from tax, in part, one of the classes which the Attorney General had ruled was derived wholly from sources within the United States.

But the brief for the petitioner contends that subsection (c) [which provides that all interest is non-taxable, except that defined in subsection (a)] is meaningless surplusage unworthy of consideration. In support of this contention, it is urged that subsection (a) is in itself all-inclusive, for the reason that (as regards interest) that subsection expressly excludes certain classes of interest which would otherwise be taxable. To this we reply that, wholly aside from the rule that the construction which gives meaning to all parts of the statute is always to be preferred, subsection (c) is an essential provision of the scheme of taxation laid down by Section 217. That subsection excludes from taxability all interest, whether from sources within the United States or not, except some, but not all, interest on the obligations of residents.

Under Section 217, the residence of the debtor is made the sole test of the taxability of interest on bonds, notes, or other interest-bearing obligations, but it cannot be said that the source from which interest is derived is conclusively determined by the place where the debtor resides. That is only one of the many criteria which would require consideration if the fact of the source were in issue. No one would suggest that interest paid by a non-resident debtor was subject to the tax, even though by any, or all, other criteria it was in fact from sources within the United States; yet such interest might well be taxable if the source were the criterion, or if subsection (c) were mere surplusage.

The fact is, that Section 217(a)(1) taxes interest which, by all criteria except the residence of the debtor, is derived from sources without the United States; and that Subsection (c) excludes from tax interest which, by all criteria except the residence of the debtor, is derived from sources within the United States. The test of taxability laid down is not the fact of the source—a particularly difficult question in the case of interest—but is the residence of the debtor, a fact which, in the usual case, is susceptible of ready and definite ascertainment. Interest on the obligations of a domestic corporation owning no property and doing no business in the United States, is derived from sources without the United States by every criterion except the residence of the debtor; yet it is taxable under Section 217.[6] Interest on money invested in a business carried on exclusively in the United States is, by every other criterion, derived from sources within the United States, even though the owner be a non-resident; yet from that fact alone, such interest is relieved from tax. The only criterion of taxability of interest is the definition contained in Section 217(a)(1); and Section 217(c)(1) expressly excludes all other interest from the tax. The exclusion of certain classes of interest by the provisions of subsection (a) relates only to interest which would otherwise be taxable because within the definition of taxable interest set out in that subdivision. Those exclusions are merely limitations on the definition contained in subsection (a), which expresses the single

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6. Such interest was held to be from sources without the United States and non-taxable under the Revenue Act of 1918, which taxed income "from sources within the United States, including the interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise". Art. 92, Reg. 45; O. 908, Cum. Bul. No. 1, p. 100. But such interest was later held to be taxable because on the obligation of a resident. L. O. 1069, Cum. Bul. I-1, p. 204. But see Section 217 (a)(1)(B), *infra*, p. 39.

class of interest excepted from the general rule of non-taxability provided in subsection (c).

Subsection (c) is an important and essential part of Section 217, and no construction of that Section can, we submit, be correct unless it gives full effect to the provisions of subsection (c).

The contention in the brief for the petitioner is that, in spite of the expressed intent of Congress, in spite of the unambiguous form of Section 217, and in spite of the fact that that Section expressly excludes from taxability income which, had the criterion been the source, would have been taxed, nevertheless, the intention of Congress was to tax all income in fact from sources within the United States. We submit that to state the proposition is to answer it.

Both the Court below and the Board of Tax Appeals recognized that the criterion of taxability under the Revenue Act of 1926 was the definition contained in Section 217(a)(1).

The Court of Appeals of the District of Columbia, in its opinion herein, said (R. 20):

> "* * * The amount of interest * * * would be taxable * * * only in case the payment came within the classification of 'Interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise, * * *.'"

And in its opinion in this case the Board of Tax Appeals stated (R. 9, 10):

> "It is at once apparent that all interest, even though concededly from sources within the United States, is not to be treated as interest from sources within the United States, for subdivision (c)(1) of

> Section 217 provides that interest other than that derived from sources within the United States as provided in paragraph (1) of subdivision (a) shall be treated as income from sources without the United States. Therefore to constitute gross income from sources within the United States the interest herein must be brought within the provisions of said paragraph (1) of subdivision (a)."

Again, in an Opinion (34 Op. A. G. 93, 95) dated January 21, 1924, the Attorney General states:

> "The point is raised that the Revenue Act of 1921 reflects the legislative intent expressed in the Revenue Acts of 1916, 1917, and 1918. But the Act of 1921, in my opinion, was not a declaration of an intent already existing, but obscure, in the law; it was, rather, a change of the prior legislative rule."

And this published Opinion was followed by re-enactment of Section 217 of the Revenue Act of 1921, without substantial change, in the Revenue Acts of 1924[7] and 1926.

The reports of the *House Ways and Means Committee* and the *Senate Finance Committee (supra)* are, as we submit, incapable of any interpretation other than as here contended. The House Report states that the law must be changed, as well as clarified. Both Reports point out that the new law "allocates" classes of income. "Allocate" is not a word to be associated with the fact of the source of the income. Congress could not by statute change the source from which income in fact emanates; it could allocate to taxable and non-taxable

7. c. 234, 43 Stat. 253.

classes income which it had the power to tax. The fact that Section 217 provides that the income is to be treated as "from sources within" or "without the United States" carries forward the familiar language of the former Acts as a convenient label, but is of no further significance. The significant words are that the income is to be "*treated as*" from such sources.

The Revenue Act of 1921 was drawn by expert draftsmen with the accumulated experience of five immediately preceding income tax Acts, covering a period of thirteen years. It would have been simple, had it been so intended, to phrase the Act to make the source of the income the criterion, and to make such precautionary provisions with respect to any particular classes of income as might have been thought wise. The words of Section 217, however, are plain and unambiguous. A system of definitions is laid down and those definitions are expressly made the criteria of taxability. A suggestion that language so inapt, with respect to the purpose contended for by petitioner, would have been used, had that purpose in fact existed, will not be readily received.

The intent of Congress, plainly expressed in the Reports of its Committees, was clearly and appropriately accomplished in Section 217. A consideration of the legislative history, the form and the words, and the unquestioned effect, of Section 217, compels, we submit, a conclusion that in enacting the Revenue Act of 1921, Congress abandoned its former policy of taxing foreign corporations on all income from sources within the United States. The provisions of Section 217 of the Revenue Act of 1921 were carried forward substantially unchanged into Section 217 of the Revenue Acts of 1924 and 1926; and the clear, the evident, and the expressed purpose of Congress in respect of Section 217 of the

Revenue Act of 1926 was to refrain from taxing foreign corporations upon any interest except upon such items thereof as might fairly be covered by the definition contained in Section 217(a)(1). No purpose of Congress, or other reason, suggests which would call for any construction of Section 217(a)(1) any more inclusive than that implied by the plain and obvious import of the words.

II.

The interest received by the respondent upon the refund of its federal income taxes theretofore overpaid was not upon a bond, note, or other interest-bearing obligation of a resident, corporate or otherwise, within the purview of Section 217(a)(1) of the Revenue Act of 1926.

Section 3220 of the Revised Statutes, as amended by Section 1111 of the Revenue Act of 1926 (*infra*, p. 45), authorizes the Commissioner of Internal Revenue to "remit, refund, and pay back all taxes erroneously or illegally assessed or collected." Section 284(a) of the Revenue Act of 1926 (*infra*, p. 44) provides that where there has been an overpayment of any income tax imposed under a prior revenue law "the amount of such overpayment shall * * * be credited against any income, war-profits, or excess-profits tax or installment thereof then due from the taxpayer, and any balance of such excess shall be refunded immediately to the taxpayer." Section 1116(a) of the Revenue Act of 1926 (*infra*, p. 46) provides for the payment of interest at 6 percent. upon the allowance of a credit or refund of any tax erroneously collected.

Pursuant to these statutes, and during the year 1927, the United States paid the sum of $8,683.91 to the re-

spondent as interest on the refund of an overpayment of income tax theretofore made by the respondent. The question presented is whether this interest should be treated as a part of the respondent's gross income for the purpose of computing its income tax for 1927.

Section 233(b) of the Revenue Act of 1926 (*infra*, p. 44), provides:

> "In the case of a foreign corporation, gross income means only gross income from sources within the United States, determined * * * in the manner provided in section 217."

Section 217 (a)(1) (*infra*, p. 39), provides:

> "* * * the following items of gross income shall be treated as income from sources within the United States:
>
> "(1) Interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise, * * *."

Section 217(c)(1) provides:

> "The following items of gross income shall be treated as income from sources without the United States:
>
> "(1) Interest other than that derived from sources within the United States as provided in paragraph (1) of subdivision (a)."

Without considering, for the moment, the fact that the Revenue Act of 1926, in another section, expressly

exempts interest on obligations of the United States, and, in still another section, allows as a credit any interest upon obligations of the United States which may be included in gross income, the inquiry resolves itself into whether the interest received by the respondent, as aforesaid, was "interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise". Section 217(c)(1) expressly excludes from taxable classification any other interest received by a foreign corporation.

To be within the definition of Section 217(a)(1), and subject to tax, the interest must be on a bond, note, or other interest-bearing obligation; and further, such bond, note, or other interest-bearing obligation must be that of a resident, corporate or otherwise. Unless both of such requirements are fulfilled, the interest is not taxable. It is the contention of the respondent that the interest here in question fulfills neither.

(A) The interest is not upon an "interest-bearing obligation".

The interest received by the respondent is not, of course, upon a bond or note. We contend it to be equally clear that it is not on any "other interest-bearing obligation" within the meaning of Section 217(a)(1). The question is whether the words "interest-bearing obligations", as used in this context have a meaning so broad as to include every conceivable sort of duty.

It is a fundamental rule of statutory construction that the words used in a statute are to be taken in their natural and accepted meanings.

Old Colony Railroad Co. v. *Commissioner*, 284 U. S. 552, 560;

United States v. *Temple,* 105 U. S. 97, 99;
United States v. *Isham,* 84 U. S. (17 Wall.) 496, 504.

Here, as pointed out above, in our first point, no purpose of Congress, or other reason, appears for straining the words of Section 217(a)(1) to embrace more than is connoted by their usual and ordinary signification. In its natural, accepted meaning, the word "obligations" does not embrace the duty to compensate for a wrong, but connotes only duties of a contractual nature.

The brief for the petitioner quotes Webster's New International Dictionary, as including as a meaning of the word "obligation", "any duty imposed by law", but it is submitted that this is not the literal or ordinary, but the broadest meaning of the term. The quotation is from the third meaning given for the word which is, in full, as follows:

> "3. That which a person is bound to do or forbear; any duty imposed by law, promise or contract, by the relations of society, or by courtesy, kindness, etc.
>
> " 'Every man has *obligations* which belong to his station. Duties extend beyond *obligation,* and direct the affections, desires, and intentions, as well as the actions.—
>
> Whewell.' "

The meaning of the word in law is given by the same dictionary in these words:

> "2. *Law.* A bond with a condition annexed, and a penalty for nonfulfillment. In a larger sense, it

is a formal and binding agreement or acknowledgment of a liability to pay a certain sum or do a certain thing."

And this is the well defined meaning of the word.

Co. Litt. 172-a;
Munzinger v. *United Press, et al.*, 52 App. Div. 338, 341;
Karasik, et al. v. *Peoples Trust Co.*, 252 Fed. 324, 335;
Tierney v. *Dowd & Co.*, 238 N. Y. 282, 288.

The meaning of "obligations" is not inelastic, however, and it may be extended when indicated by the context. Indeed, under some circumstances "obligations" may even include non-contractual duties, but that is an extreme construction to be used only when necessitated by the umistakable requirements of the context, or by way of extending the signification of the word beyond its ordinary, to its broadest, meaning in order to effectuate a clear purpose not clearly expressed.

The context in Section 217(a)(1) does, as we agree, indicate a meaning for "obligations" broader than that implied in its original legal meaning of a bond, but nothing in the context suggests, and no legislative purpose commends, that the significance of the word be construed in that extreme sense contended for in the brief for the petitioner. As urged in Point I above, the broad purpose assigned to Congress by the brief for the petitioner as a reason for such an unusual construction, does not exist.

As used in this context the words "interest-bearing obligations" should, in accordance with the rule of *ejusdem generis*, be so construed as to limit the meaning

of "obligations" to those of a kind or nature generically similar to bonds and notes. This might confine "obligations" to written instruments, or to any duties to repay borrowed money. Giving the broader of these meanings to the word, so as to include in its significance any duty to repay money loaned, we achieve an harmonious meaning for the whole subsection, at once generically similar to bonds and notes and inclusive of the meaning of the next succeeding words.

On the one hand, the words "interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise" in Section 217(a)(1) are followed by "not including (A) interest on deposits with persons carrying on the banking business paid to persons not gaged in business within the United States and not having an office or place of business therein". Since the phrase in terms excludes bank interest only when paid to foreigners not engaged in business in the United States and not having any office here, and does not exclude it when paid to foreigners engaged in business or having an office here, it is manifest that Congress intended bank interest to be included in "Interest on * * * other interest-bearing obligations." On the other hand, the preceding words, "bonds" and "notes", deserve consideration, for they are not mere surplusage. If, as contended in the brief for the petitioner, "obligations" includes any sort of duty whatever, those words become meaningless. Had Congress intended "obligations" to have a meaning so broad, the words would have been simply "all interest paid by resident debtors", or some other appropriate language, and not the language actually used, which is unsuited to such a construction.

If "obligations" is construed to mean all duties arising out of an express or implied promise to repay

money loaned, a result is achieved which gives to the word neither its most technical, nor its broadest possible, significance, and which, at the same time, is *ejusdem generis* with bonds and notes and inclusive of the duty to repay a bank deposit.

This is the meaning of "obligations" which, as we contend, is that implied by the natural, ordinary and accepted import of the words; and the only meaning which gives to every part of the subsection its proper weight and significance.

Not only does a consideration of Section 217(a)(1) itself indicate the construction for which we contend, but an examination of the remainder of the statute thoroughly confirms that view.

The construction here contended for is that applied in *American Viscose Corporation* v. *Commissioner*, 56 Fed. (2d.) 1033 (C. C. A. 3), certiorari denied, 287 U. S. 615, cited in the petitioner's brief. In that case the court had under consideration whether interest on a refund of Federal income taxes is interest on an obligation of the United States within the meaning of the word "obligations" in Section 213(b)(4),[8] where that term follows a list of words naming specific kinds of interest-bearing obligations. Section 213(b)(4) expressly exempts and excludes from gross income "Interest upon * * * securities issued under the provisions of the Federal Farm Loan Act, or under the provisions of such Act as amended; or (C) the obligations of the United States * * *"; and the Court held that the word "obligations" does not include the duty to refund overpaid taxes.

In five other cases the issue was the same; *i. e.*, whether interest paid on a statutory duty to compensate is

8. *Infra*, p. 38.

interest on an "obligation" within the meaning of Section 213(b)(4); and in each of these cases the same distinction was drawn. Interest upon a statutory obligation of the United States (or a State or Municipality) is not interest upon an "obligation" within the meaning of the Revenue Acts when that word is associated with words referring specifically to various kinds of promissory obligations.

United States Trust Co. of New York v. *Anderson*, 65 Fed. (2d.) 575 (C. C. A. 2), certiorari denied, 290 U. S. 685;
Missouri Pacific R. R. Co. v. *Commissioner*, 22 B. T. A. 267;
Kline v. *Commissioner*, 26 B. T. A. 745;
Isham v. *Commissioner*, 26 B. T. A. 1040;
Kansas City Southern Ry. Co. v. *Commissioner*, 16 B. T. A. 665.

Wholly aside from the fact that in a highly technical statute such as one of our Revenue Acts, which are drawn by expert draftsmen and phrased with nice precision, it will not readily be infered that important words do not have the same meaning throughout the Act; the analogy between Sections 217(a)(1) and 213(b)(4) is too close to be disregarded.

In each case the word "obligations" follows words indicating particular kinds of written obligations within the technical meaning of the term, and in each case it is necessary to give to "obligations" that broader meaning, here contended for, which results in including within its significance all duties arising from the borrowing of money. In the case of Section 217(a)(1) the latter necessity arises, as aforesaid, from the phrase excluding bank interest from taxability only under certain circumstances. In the case of Section 213(b)(4) the necessity does not appear on the face of the statute,

but by printed administrative regulation incorporated into the statute by re-enactment without change. In each Section the unwritten obligation to be included in the meaning of the word is the obligation of a bank to repay a deposit; in Section 217(a)(1) it is the obligation arising out of "deposits with persons carrying on the banking business"; in Section 213(b)(4) the obligation arising out of "moneys deposited in postal savings banks".[9]

Article 77 of Regulations No. 62, promulgated in 1922 and relating to the Revenue Act of 1921, provides (as do the Regulations under all subsequent Acts) that interest on postal savings accounts is exempt from tax, as interest on an obligation of the United States; and Section 213(b)(4) of the Revenue Act of 1921 has been re-enacted without change in this regard in each succeeding Revenue Act. *Article 77* is, in part, in these words:

> "Art. 77. INTEREST UPON UNITED STATES OBLIGATIONS. * * * Interest credited to postal savings accounts upon moneys deposited in postal savings banks is exempt from income tax. * * *" (Art. 77, Reg. 62.)

The analogy between Section 217(a)(1) and Section 213(b)(4) is obvious and actual. As six cases have held, "obligations" in Section 213(b)(4) does not include a statutory duty to compensate for a wrong. The same meaning must be given to the word in Section 217(a)(1). There is no reason to give the word one meaning in one section and another in the other; and if "obligations" has the same meaning in both sections, the interest here in question must either be omitted from the tax laid by

9. The quotation is from Article 77, Regulations No. 62.

Section 217(a)(1) or exempted under Section 213(b)(4). As aforesaid, to contend that the interest here under consideration is taxable, the petitioner must assert, as his fundamental proposition, that it is interest on an obligation of the United States; but if the interest is on an obligation of the United States, then it is exempted from taxation by Section 213(b)(4). The reply to this apparent dilemma is to construe "obligations" as contended above, that interest on non-contractual duties is not on "obligations" of the United States.

But if the interest received by the respondent is within the definition of Section 217(a)(1), a further dilemma presents. Section 236(a) of the Act provides:

> "For the purpose only of the tax imposed by section 230 there shall be allowed the following credits:
>
> "(a) The amount received as interest upon obligations of the United States which is included in gross income under section 233; * * *."

The tax under consideration is that imposed upon respondent by Section 230.[10] The only gross income of respondent is that defined under Section 233, and is that "from sources within the United States, determined * * * in the manner provided in Section 217". No contention that the meaning of "obligations of the United States" in Section 236(a) must be limited by context to obligations of one sort or another can be asserted, for there is no context to which to refer. The term is simple, plain, general and all inclusive. The interest here in question is not taxable (because it is not included in gross income), unless it is on an "obli-

10. *Infra*, p. 43.

gation" of the United States; but if it is upon an "obligation" of the United States, and is included in gross income, then it is allowed as a credit by Section 236(a), is therefore not net income, and consequently not liable to the tax. Again, the obvious answer is that this interest is not upon an "obligation" within the meaning of Section 217(a)(1).

In the foregoing, we have contended that without the aid of any rule of strict construction, the interest here in question should be construed to be without the scope of Section 217(a)(1). Under the applicable rules, however, Section 217(a)(1) should be construed strictly in favor of the respondent and against the Government.

Section 217(a)(1) imposes a tax. The well established rule is that a statute imposing a tax is to be strictly construed in favor of the taxpayer.

Burnet v. *Niagara Falls Brewing Co.*, 282 U. S. 648, 654;

Reinecke v. *Northern Trust Co.*, 278 U. S. 339, 348;

United States v. *Merriam*, 263 U. S. 179.

In the last named case, this Court said, pp. 187, 188:

> "* * * On behalf of the Government it is urged that taxation is a practical matter and concerns itself with the substance of the thing upon which the tax is imposed rather than with legal forms or expressions. But in statutes levying taxes the literal meaning of the words employed is most important for such statutes are not to be extended by implication beyond the clear import of the language used. If the words are doubtful, the doubt must be resolved against the Government and in favor of the taxpayer. * * *"

Of the possible meanings of the word "obligations", only the broadest is sufficient to include this interest within its scope. Where the word is subject to a rule of strict construction, it would seem to be conclusive that its significance does not include any non-contractual duty.

The rule of strict construction is the final term of the analogy between Sections 217(a)(1) and 213(b)(4). As above set out, the analogy between the respective contexts of the two sections is complete. But in assigning the meaning here contended for to the word "obligations", in the six cases above cited (*supra*, pp. 23, 24), the respective Courts applied the rule of strict construction to the word. The rule of strict construction, however, is equally applicable to Section 217(a)(1) and the analogy is thus perfected. In Section 213(b)(4) an exemption is granted to interest on "obligations". That word must, therefore, be strictly construed and its broadest possible meaning must not be implied unless plainly required. In Section 217(a)(1) a tax is laid upon interest on "obligations". Again, the word must be strictly construed and its broadest possible meaning must not be implied unless plainly required. In neither section does the context, the purpose of Congress, nor any other reason, require or suggest the broadest possible meaning. In neither section, therefore, does the word include statutory duties.

But it is contended in the brief for the petitioner that taxation is the rule, and exemption the exception, and that any doubt as to the taxability of the interest here in question must, therefore, be resolved in favor of taxation. To this we reply that however true the petitioner's major premise may be as regards domestic corporations, it is, as hereinabove in Point I set out, exactly contrary to the fact in the case of foreign cor-

porations. Section 217(c)(1) lays down the general rule that interest received by a foreign corporation is not subject to tax. The provisions of Section 217(a)(1) state an exception to that general rule. With respect to interest received by foreign corporations, both the form and the substance of Section 217 establish non-taxability as the rule and taxability as the exception.

Section 217(c)(1) provides non-taxability for all interest except that defined in Section 217(a)(1). It is Section 217(c)(1) which is general in form; Section 217(a)(1) is explicit.

Section 217(c)(1) covers the broad and inclusive field; Section 217(a)(1), the narrow and restricted. Within the purview of Section 217(c)(1) is included all interest, whether derived from sources within or without the United States, except some, but not all, interest on the obligations of residents.

Where a statute establishes a general rule, with exceptions, the exceptions should be strictly construed, they include only what their plain language embraces; they must not be extended by implication; the expression of one exception excludes all others; and all doubts must be resolved in favor of the general rule.

United States v. *Woodward,* 256 U. S. 632, 634;
Spokane & Inland Empire R. Co. v. *United States,* 241 U. S. 344, 350;
Equitable Life Assurance Society v. *Clements,* 140 U. S. 226, 234;
Bend v. *Hoyt,* 13 Pet. 263, 271, 272;
Piedmont & N. Ry. Co. v. *United States,* 30 Fed. (2d.) 421;
Hopkins, et al. v. *United States,* 235 Fed. 95 (C. C. A. 8);

Baker v. *Clowser, et al.*, 158 Iowa 156; 43 L. R. A. (N. S.) 1056.

The respondent is not, as intimated in the brief for the petitioner, seeking an exemption here. The distinction between exempting an item and refraining from taxing it is legitimate and clear. The rule of strict construction of an exemption (which is one expression of the more general rule that an exception is to be strictly construed) is not applicable in this case. Far from the construction of Section 217(c)(1) being limited by a rule of strict construction on the ground that an exemption is claimed, it is the construction of Section 217(a)(1) which should be confined, because that subsection expresses an exception.

It is the contention of the respondent that, without the aid of the rules of strict construction, it is clear that the interest here under consideration was not upon an "obligation" within the meaning of Section 217 (a)(1); but if there be any doubt in this regard, then, pursuant to the strict construction made applicable by the form and substance of Section 217, that doubt should be resolved in favor of non-taxability.

It is contended that this interest is not taxable to the respondent because it is not interest on "bonds, notes, or other interest-bearing obligations" within the meaning of Section 217(a)(1) of the Revenue Act of 1926.

(B) The interest here in question, even if upon an "obligation" within the meaning of Section 217(a)(1), is, nevertheless, not upon the obligation of a resident, corporate or otherwise, within the meaning of that subsection.

In any event, and even if the interest received were interest upon an interest-bearing obligation within the

meaning of the statute, nevertheless, the obligation is not that of a resident, corporate or otherwise. The term "resident" means one who dwells in a place, or has a place of abode and cannot be applied to a sovereign or government, which has no capacity to reside or have an abode.

Except for the general and unsupported assertions that, as a corporate entity, the United States obviously must have a corporate residence somewhere, and that a sovereign resides where it is sovereign, the brief for the petitioner, it is submitted, begs this question. The inquiry is not where, but whether, the United States resides.

This is the point upon which the Board of Tax Appeals based its decision for the respondent. While we contend that that decision should have been grounded not only upon the incapacity of the United States to reside, but also on the other points raised herein (which were most seriously urged before the Board and the Court below), we call attention to the fact that a decision favorable to the respondent on either the foregoing, or the following contentions, should result in affirmance.

As we have above pointed out, there is no legislative intent, or any other reason, calling for any construction of Section 217(a)(1) more favorable to the petitioner's contentions than that implied by the natural and obvious import of the words. On the contrary, for two reasons, the rule of strict construction should be applied and all doubts resolved in favor of non-taxability. And this applies, of course, to the construction of "residents" with a force equal to that with which it applies to "obligations."

It is our contention that the plain, ordinary and accepted significance of the language requires the con-

struction that the United States is not a resident. To repeat from our brief in opposition to certiorari, it seems clear, and it has been held, that the natural and obvious import of the word "resident" does not include the sovereign.

In the case of the *State* v. *City of Trenton*, 40 N. J. L. 89, 91, the Supreme Court of Judicature of the State of New Jersey held that indebtedness to the State could not be deducted from the taxable value of property under a statute permitting the deduction of indebtedness to residents; and said, in part:

> "It is only by the greatest latitude of construction that we can say that the state resides within the state. The word 'residing' refers to individual abode, though it is sometimes used figuratively. It will not apply to the state in its representative and governmental relation to its citizens. The people, as individuals, reside in the state, but the political body called the state cannot be said, in the proper use of language, to reside anywhere."

And in *Consorzio Veneziano di Armamento e Navigazione* v. *Commissioner*, 21 B. T. A. 984, where it was held that interest paid by the United States on an award of compensation for property taken during the war is not income from sources within the United States, within the meaning of Section 119(a)(1) of the Revenue Act of 1928 [which is substantially the same as Section 217(a)(1) of the 1926 Act], and thus not taxable when paid to a foreign corporation, the Board of Tax Appeals said, at page 988:

> "As we view the question, it is not necessary for us to determine whether the amount was awarded

as interest or as compensation. Conceding for the sake of argument that it was interest as contended by the respondent, not all interest is 'income from sources within the United States' taxable as income of a foreign corporation. The Revenue Act of 1928, Section 119(a)(1), provides what shall be included in gross income of a foreign corporation with respect to interest as follows:

> "'Interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise * * *'

and in paragraph (c) of the same section provides:

> "'The following items of gross income shall be treated as income from sources without the United States: (1) Interest other than that derived from sources within the United States as provided in subsection (a)(1) of this section.'

"In our opinion, even if the amount constituted interest, it was not interest on bonds, notes or other interest-bearing obligations of residents, corporate or otherwise. It would be a strained construction to say in the first place that the United States was a resident, corporate or otherwise, of the United States. Wherever in the statute obligations of the United States are referred to they are referred to specifically as 'obligations of the United States'. The expression 'resident' in its ordinary acceptation does not refer to the Government itself and the language in the statute 'resident, corporate or otherwise', we think should be given its ordinary and generally accepted meaning. This view fiinds sup-

port in article 1509 of Regulations 69, with respect to this section of the statute, which states that a 'domestic corporation is a resident corporation * * *.' The regulations of the Commissioner construe the language in its ordinary and generally accepted meaning and make no reference to the Government as being 'resident, corporate or otherwise'."

As stated by the Board, wherever the Revenue Acts refer to obligations of the United States, they are specifically so designated. Similarly, wherever the Revenue Acts refer to the United States, they are referred to in unequivocal terms.

Section 213(b)(4) exempts interest on "(A) the obligations of a State, Territory, or any political subdivision thereof, or the District of Columbia; or * * * (C) the obligations of the United States * * *."

Section 236 grants a credit with respect to "interest upon obligations of the United States".

Section 214(a)(10) allows the deduction of contributions to "(A) The United States, any State, Territory, or any political subdivision thereof, or the District of Columbia * * *; (B) any corporation * * *."

The distinction between a private corporation and a sovereign entity indicated in Section 214(a)(10) is also made in Section 256, which refers to "interest upon the bonds of foreign countries and interest upon the bonds of and dividends from foreign corporations".

Of course, the United States is a body politic and corporate. Yet Congress has indicated by the quoted Sections that the United States is not included within

the term "corporation" as used in the Revenue Act of 1926. Indeed, Section 230 lays a tax "upon the net income of every corporation". Of course, no tax was intended to be laid upon the United States; yet here again the construction for which the petitioner contends would require the holding that, even in an Act so meticulously drawn as the Revenue Acts, the same word is to be given different meanings in different sections, a conclusion always to be avoided.

In the brief for the petitioner, it is contended that the result in *State* v. *City of Trenton, supra,* was reached in the exercise of a strict construction dictated by a legislative purpose to be served by limiting the meaning of the word "residing." But the rule of strict construction is applicable here, as well, and not only "obligations," but also "residents" should be construed strictly in favor of non-taxability.

It is contended that in any event the interest received by the respondent is not upon the obligation of "residents, corporate or otherwise," within the meaning of Section 217(a)(1) of the Revenue Act of 1926.

There remains the point raised in the brief for the petitioner that, inasmuch as domestic corporations have been held to be taxable on interest on refunds of overpaid taxes, it is unfair that foreign corporations are not likewise taxed.

But as stated by this Court in *Brushaber* v. *Union Pacific R. Co.,* 240 U. S. 1 (in disposing of objections to the progressive rates of the income tax), p. 25:

> "* * * it is, of course, superfluous to say that arguments as to the expediency of levying such taxes, or of the economic mistake or wrong involved in their imposition, are beyond judicial cognizance."

Again, in *La Belle Iron Works* v. *United States,* 256 U. S. 377, this Court said, pp. 392, 393:

> "The difficulty of adjusting any system of taxation so as to render it precisely equal in its bearing is proverbial, and such nicety is not even required of the States under the equal protection clause, much less of Congress under the more general requirement of due process of law in taxation."

There is no reason, either of law, or policy, why the United States should not tax domestic corporations on classes of income tax-free to foreign corporations.

> *Barclay & Co.* v. *Edwards,* 267 U. S. 442, 449, 450.

Congress may have had numerous reasons, of varying degrees of persuasiveness, for making the differentiation, as, for example, that interest of this class was not earned in competition with domestic corporations, but this is pure speculation and of no importance, for we are concerned only with whether, not why, this interest is excluded from tax. We have demonstrated above, as we contend, that Congress not only did make the taxability of interest, when received by foreign corporations, depend solely upon the explicit definition of Section 217(a)(1), but that it intended to do so and was impelled by the desire of establishing a certain and workable criterion.

Congress intended to establish, and did establish, the precise definition contained in Section 217(a)(1) as the criterion of taxability of interest to a foreign corporation. The words of that definition are not sufficiently broad, when taken in their natural and accepted sense,

to include a duty to refund overpaid taxes as an "obligation," or the United States as a "resident," and if this be doubtful the applicable rules of strict construction require the doubt to be resolved in favor of non-taxability. The interest received by the respondent in connection with the refund of its overpaid income taxes is not within the ambit of the definition contained in Section 217(a)(1) and is not subject to the tax.

Conclusion.

For the reasons stated, we respectfully submit that the judgment below should be affirmed.

Dated: New York, N. Y.,
October 3, 1934.

Respectfully submitted,

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APPENDIX.

Statutes Involved.

Revenue Act of 1926, c. 27, 44 Stat. 9:

Sec. 2. (a) When used in this Act—

* * * * *

(3) The term "domestic" when applied to a corporation or partnership means created or organized in the United States or under the law of the United States or of any State or Territory.

(4) The term "foreign" when applied to a corporation or partnership means a corporation or partnership which is not domestic.

(U. S. C. App., Title 26, Sec. 1262.)

Sec. 213. For the purposes of this title, except as otherwise provided in section 233—

(a) The term "gross income" includes * * *.

(b) The term "gross income" does not include the following items, which shall be exempt from taxation under this title:

* * * * *

(4) Interest upon (A) the obligations of a State, Territory, or any political subdivision thereof, or the District of Columbia; or (B) securities issued under the provisions of the Federal Farm Loan Act, or under the provisions of such Act as amended; or (C) the obliga-

tions of the United States or its possessions. Every person owning any of the obligations or securities enumerated in clause (A), (B), or (C) shall, in the return required by this title, submit a statement showing the number and amount of such obligations and securities owned by him and the income received therefrom, in such form and with such information as the Commissioner may require. In the case of obligations of the United States issued after September 1, 1917 (other than postal-savings certificates of deposit), the interest shall be exempt only if and to the extent provided in the respective Acts authorizing the issue thereof as amended and supplemented, and shall be excluded from gross income only if and to the extent it is wholly exempt to the taxpayer from income taxes;

* * * * *

(U. S. C. App., Title 26, Sec. 954.)

Sec. 217. (a) In the case of a nonresident alien individual * * *, the following items of gross income shall be treated as income from sources within the United States:

(1) Interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise, not including (A) interest on deposits with persons carrying on the banking business paid to persons not engaged in business within the United States and not having an office or place of business therein, or (B) interest received from a resident alien individual, a resident foreign corporation, or a domestic corporation, when it is shown to the satisfaction of the Commissioner that less than 20 per centum of the gross income of such resident payor or domestic corporation has been derived from sources within the United States, as de-

termined under the provisions of this section, for the three-year period ending with the close of the taxable year of such payor preceding the payment of such interest, or for such part of such period as may be applicable;

(2) The amount received as dividends (A) from a domestic corporation other than a corporation entitled to the benefits of section 262, and other than a corporation less than 20 per centum of whose gross income is shown to the satisfaction of the Commissioner to have been derived from sources within the United States, as determined under the provisions of this section, for the three-year period ending with the close of the taxable year of such corporation preceding the declaration of such dividends (or for such part of such period as the corporation has been in existence), or (B) from a foreign corporation unless less than 50 per centum of the gross income of such foreign corporation for the three-year period ending with the close of its taxable year preceding the declaration of such dividends (or for such part of such period as the corporation has been in existence) was derived from sources within the United States as determined under the provisions of this section;

(3) Compensation for labor or personal services performed in the United States;

(4) Rentals or royalties from property located in the United States or from any interest in such property, including rentals or royalties for the use of or for the privilege of using in the United States, patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, and other like property; and

(5) Gains, profits, and income from the sale of real property located in the United States.

* * * * *

(c) The following items of gross income shall be treated as income from sources without the United States:

(1) Interest other than that derived from sources within the United States as provided in paragraph (1) of subdivision (a);

(2) Dividends other than those derived from sources within the United States as provided in paragraph (2) of subdivision (a);

(3) Compensation for labor or personal services performed without the United States;

(4) Rentals or royalties from property located without the United States or from any interest in such property, including rentals or royalties for the use of or for the privilege of using without the United States, patents, copyrights, secret processes and formulas, good will, trade-marks, trade brands, franchises, and other like properties; and

(5) Gains, profits, and income from the sale of real property located without the United States.

* * * * *

(e) Items of gross income, expenses, losses and deductions, other than those specified in subdivisions (a) and (c), shall be allocated or apportioned to sources

within or without the United States under rules and regulations prescribed by the Commissioner with the approval of the Secretary. Where items of gross income are separately allocated to sources within the United States, there shall be deducted (for the purpose of computing the net income therefrom) the expenses, losses and other deductions properly apportioned or allocated thereto and a ratable part of other expenses, losses or other deductions which can not definitely be allocated to some item or class of gross income. The remainder, if any, shall be included in full as net income from sources within the United States. In the case of gross income derived from sources partly within and partly without the United States, the net income may first be computed by deducting the expenses, losses or other deductions apportioned or allocated thereto and a ratable part of any expenses, losses or other deductions which can not definitely be allocated to some items or class of gross income; and the portion of such net income attributable to sources within the United States may be determined by processes or formulas of general apportionment prescribed by the Commissioner with the approval of the Secretary. Gains, profits and income from (1) transportation or other services rendered partly within and partly without the United States, or (2) from the sale of personal property produced (in whole or in part) by the taxpayer within and sold without the United States, or produced (in whole or in part) by the taxpayer without and sold within the United States, shall be treated as derived partly from sources within and partly from sources without the United States. Gains, profits and income derived from the purchase of personal property within and its sale without the United States or from the purchase of per-

sonal property without and its sale within the United States, shall be treated as derived entirely from sources within the country in which sold, except that gains, profits and income derived from the purchase of personal property within the United States and its sale within a possession of the United States or from the purchase of personal property within a possession of the United States and its sale within the United States shall be treated as derived partly from sources within and partly from sources without the United States. (U. S. C. App., Title 26, Sec. 958.)

Sec. 230. (a) In lieu of the tax imposed by section 230 of the Revenue Act of 1924, there shall be levied, collected, and paid for each taxable year upon the net income of every corporation, a tax at the following rates:

(1) For the calendar year 1925, 13 per centum of the amount of the net income in excess of the credits provided in sections 236 and 263; and

(2) For each calendar year thereafter, 13½ per centum of such excess amount.

(b) A taxpayer whose taxable year is the calendar year and who elects for the calendar year 1925 to pay the tax imposed by this section in four installments as provided in section 270, shall pay such installments in amounts as follows:

(1) The amount of the first and second installments shall each equal 24 per centum of the tax; and

(2) The amount of the third and fourth installments shall each equal 26 per centum of the tax. (U. S. C. App., Title 26, Sec. 981.)

Sec. 232. In the case of a corporation subject to the tax imposed by section 230 the term "net income" means the gross income as defined in section 233 less the deductions allowed by sections 234 and 206, and the net income shall be computed on the same basis as is provided in subdivisions (b) and (d) of section 212 or in section 226. In the case of a foreign corporation or of a corporation entitled to the benefits of section 262 the computation shall also be made in the manner provided in section 217. (U. S. C. App., Title 26, Sec. 984.)

Sec. 233. (a) In the case of a corporation subject to the tax imposed by section 230 the term "gross income" means the gross income as defined in sections 213 and 217, except that mutual marine insurance companies shall include in gross income the gross premiums collected and received by them less amounts paid for reinsurance.

(b) In the case of a foreign corporation, gross income means only gross income from sources within the United States, determined (except in the case of insurance companies subject to the tax imposed by sections 243 or 246) in the manner provided in section 217. (U. S. C. App., Title 26, Sec. 985.)

Sec. 236. For the purpose only of the tax imposed by section 230 there shall be allowed the following credits:

(a) The amount received as interest upon obligations of the United States which is included in gross income under section 233; * * *.

(U. S. C. App., Title 26, Sec. 988.)

Sec. 284. (a) Where there has been an overpayment of any income, war-profits, or excess-profits tax imposed

by this Act, the Act entitled "An Act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes," approved August 5, 1909, the Act entitled "An Act to reduce tariff duties and to provide revenue for the Government, and for other purposes," approved October 3, 1913, the Revenue Act of 1916, the Revenue Act of 1917, the Revenue Act of 1918, the Revenue Act of 1921, or the Revenue Act of 1924, or any such Act as amended, the amount of such overpayment shall, except as provided in subdivision (d), be credited against any income, war-profits, or excess-profits tax or installment thereof then due from the taxpayer, and any balance of such excess shall be refunded immediately to the taxpayer.

(U. S. C. App., Title 26, Sec. 1065.)

* * * * *

Sec. 1111. Section 3220 of the Revised Statutes, as amended, is amended to read as follows:

"Sec. 3220. Except as otherwise provided in sections 284 and 319 of the Revenue Act of 1926 the Commissioner of Internal Revenue, subject to regulations prescribed by the Secretary of the Treasury, is authorized to remit, refund, and pay back all taxes erroneously or illegally assessed or collected, all penalties collected without authority, and all taxes that appear to be unjustly assessed or excessive in amount, or in any manner wrongfully collected; also to repay to any collector or deputy collector the full amount of such sums of money as may be recovered against him in any court, for any internal-revenue taxes collected by him, with the cost and expenses of suit; * * *."

(U. S. C. App., Title 26, Sec. 149.)

Sec. 1116. (a) Upon the allowance of a
fund of any internal-revenue tax errone
legally assessed or collected, or of any pen
without authority, or of any sum which w
or in any manner wrongfully collected, i
be allowed and paid on the amount of su
refund at the rate of 6 per centum per annu
date such tax, penalty, or sum was paid to
the allowance of the refund, or in the case
to the due date of the amount against whic
is taken, but if the amount against which t
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then to the date of the assessment of that am
(U. S. C. App., Title 26, Sec. 153.)

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